

from consideration in this application as a result of an election with traverse of claims 1-20 on October 24, 2002 in response to a restriction requirement by the Examiner mailed on October 2, 2002.

I. Rejections under 35 U.S.C. § 112.

Cancelled claims 1-4 and 6-20 were previously rejected by the Examiner under 35 U.S.C. § 112, first paragraph, as containing subject matter that is not enabled by the specification. The Examiner stated: "...the specification, while being enabling for the use of wheat gluten, does not reasonably provide enablement for the use of any other gluten protein composition, from any random source." It is believed that new claims 31-52, which recite "wheat gluten," overcome this rejection as they contain subject matter that is properly enabled by the scope of the specification.

In addition, cancelled claims 1-15 and 20 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention. The Examiner stated: "The phrase 'a structure substantially the same as' is indefinite." This phrase has been omitted from the new claims 31-52, and it is believed that new claims 31-52 now particularly point out and distinctly claim the invention.

The Examiner also rejected claims 2, 4, 10, 13-15, and 20 under this section. These claims have been cancelled, and new claims 31-52 are believed to overcome the basis for these rejections and to particularly point out and distinctly claim the invention.

II. The Claimed Invention is not Anticipated Under 35 U.S.C. § 102(b) by Feucht.

Cancelled claims 1-20 were rejected under 35 U.S.C. § 102(b) as being anticipated by German patent DE 3708622 to W. Feucht ("Feucht"). Feucht, however, does not teach,

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disclose or suggest a dry additive mixture that includes gluten and soy protein as claimed herein. Feucht therefore does not anticipate the invention as claimed.

The Examiner cited Feucht as disclosing a dry additive mixture “for making bread rolls” and which comprises 16.9% toasted, defatted soya grits. Feucht also includes 5% vital wheat protein, which the Examiner stated was known in the art to be equivalent to vital wheat gluten or wheat gluten.

The present invention as claimed in new claims 31-52, by contrast, includes soy protein. Soy protein is defined in the specification as including “soy grits and soy flour” (Page 3, lines 21-22). Since Feucht does not include any teaching, disclosure or suggestion of utilizing soy flour to enhance the soy protein content of the additive mixture, Feucht does not anticipate the claimed invention.

III. The Claimed Invention is not Obvious Under 35 U.S.C. § 103(a) over Thompson in view of the ‘439 Patent and Feucht.

Cancelled claims 1-20 were also rejected under 35 U.S.C. § 103(a) as being obvious over Patent No. 4,109,018 to Jerome B. Thompson (“Thompson”) in view of the combination of German Patent No. 1,522,439 (“the ‘439 Patent”) and Feucht. Neither Thompson, the ‘439 Patent nor Feucht, however, teach, disclose or suggest, alone or in combination, the present invention as claimed in claims 31-52. In addition, Thompson cannot be properly combined with Feucht and the ‘439 Patent.

The Examiner cited the Thompson reference for disclosing a composition comprising “wheat flour, ‘from about 3 to 9 parts by weight of an added vital wheat gluten, [and] from about 5 to 12 parts by weight of a protein material selected from the group consisting of low fat soy flour, nonfat dry milk...’, etc. (col. 2.)” It is respectfully noted that Thompson, at

column 2, lines 53-55, states that "all of the ingredients [are] expressed as parts by weight **per 100 parts of wheat flour**," (emphasis added), which is commonly referred to as the Bakers' percent or percentage.

The Examiner also cited Thompson at column 19, lines 21-23, for describing a bread loaf made containing a toasted flaked soybean. Thompson at column 19, lines 23-25, describes the levels of the coarsening agents, such as the toasted soybean, as ranging from 4-12% (Bakers' percentage). Taking Thompson as a whole results, at best, in a description of a bread product containing 3-9 Bakers' percent gluten, 5-12 Bakers' percent protein material, such as soy flour, and 4-12 Bakers' percent coarsening agent, such as toasted flaked soybean. The total soy ingredient content of the product described in Thompson therefore, can range from 9 to 24 Bakers' percent.

In contrast, a bread product made in accordance with the present invention, utilizing the instantly claimed food ingredient, dry mix, or kit, contains significantly greater amounts of protein than described or even contemplated by the Thompson reference. On page 5 of the present specification, a bread dough formulation in accordance with the claimed invention is described on a total weight basis, including 27.77995% flour, 12.66% soy flour, 11.71% soy grits, and 4.10% wheat gluten. Converting these total weight percentages to Bakers' percentages, as used in Thompson, results in a bread product having **14.76 Bakers' percent gluten**, and **87.73 Bakers' percent total soy protein**. There is no teaching or suggestion in Thompson that would lead one of ordinary skill in the art to utilize a food ingredient, dry mix, or kit which provides to a bread formulation **more than 1½ times the amount of gluten** taught by Thompson, and **more than three times the amount of total soy protein** taught by

Not all claims

Thompson, especially in light of the statement in Thompson which clearly teaches away from significantly changing the amounts of these ingredients: "Departures from the required ranges not only have marginal effects upon caloric values, but have **serious deleterious effects on the edibility and acceptability of the bread.**" Thompson at Column 2, lines 67-68 to Column 3, lines 1-2 (emphasis added.)

As will be appreciated by the Examiner, the teachings of Thompson further exemplify the unexpectedness of the ability of the present invention to provide significant levels of protein, including soy protein, to a food product without significantly adversely affecting the quality of the product. Thompson simply does not teach or contemplate the levels of protein ingredients of the presently claimed invention, and none of the cited secondary references can remedy this deficiency in Thompson, since Thompson itself teaches against departing from the recited ranges of ingredients.

The Examiner cited the '439 Patent for disclosing a bakery bread product "in the preparation of which debittered soya grits have been used." Col. 2, lines 66-67. The bakery product also includes "soya flour and/or protein extract" such that "the protein content of the bakery product may be increased disproportionately to the soya content." Col. 4, lines 18-25. Wheat flour, salt, baking leavening, soy flour and powdered buttermilk are also used to create the bread product as described in the '439 Patent.

In contrast to the '439 Patent, the present invention utilizes **added** wheat gluten and soy protein for use in the preparation of a food product, wherein the ratio of the gluten to soy protein in the resulting food product is about .20:1 to about .50:1 by weight of the food product.. This ratio of added wheat gluten to soy protein is more than about 1.5 times the

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naturally occurring ratio of wheat gluten to wheat flour. In the present invention, the “added gluten and soy flour are present in a proportion that is substantially greater than the proportion of gluten which is naturally present in wheat flour.” See page 4, lines 28-29 of the present application. The “added wheat gluten and soy protein...impart to the dough and baked bread, a protein concentration heretofore unknown for a wheat dough or bread, while also imparting a structure capable of a gas retention and a symmetry that is substantially the same as the symmetry of a wheat bread made with wheat flour that is substantially free of soy flour.” See page 3, lines 25-29 of the present application. The ‘439 Patent does not teach, disclose, or suggest utilization of added wheat gluten, as an additive in the bread product. The ‘439 Patent therefore does not teach, disclose or suggest the claimed invention.

Furthermore, the combination of the teachings of the ‘439 Patent with the Thompson reference is improper, since the Thompson reference describes a bread product having a protein content of about 9 to 11% by weight of the product resulting from the formulations disclosed in Thompson (col. 6, line 13). To increase the protein content to the 16% level described in the ‘439 Patent would be contrary to the teachings of Thompson, which specifically teaches against departing from the required ranges of the protein-containing ingredients to avoid deleterious effects on the bread product.

Feucht is distinguished from the claimed invention as stated above. Feucht does not teach or suggest a combination of wheat gluten and soy protein to achieve a desired protein level because Feucht does not include or suggest the use of soy flour, which is a component of the soy protein used in the present invention. The combination of Feucht with Thompson does not overcome the deficiencies in Thompson regarding the amounts of gluten

and soy protein in the food product, since the levels of these ingredients in Feucht are similar or even less than the levels disclosed in Thompson. In Feucht, the level of vital wheat protein in the dough is 2.8 Bakers' percent, and the level of soy grits in the dough is 9.58 Bakers' percent. Nothing in Feucht would lead one of ordinary skill in the art to significantly increase these levels to achieve the levels claimed in the present invention, nor is there any teaching in any of the cited references that would indicate to one of ordinary skill in the art that doing so would result in a bread product with suitable characteristics.

No combination of the above references above teach, suggest, or disclose an increased gluten to soy protein ratio in a product resulting from the claimed invention, wherein the soy protein includes soy grits and soy flour. Because no combination of the cited references teach, disclose or suggest the elements of the claimed invention, the invention is not obvious over the references.

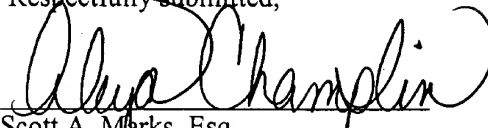
In fact, the teachings of the Thompson reference are evidence of the unexpectedness of the present invention, since one of ordinary skill in the art, reading Thompson, would believe that the ranges of ingredients recited in Thompson were critical to providing a suitable bread product, and that departures from those ranges would have deleterious effects on the bread product.

CONCLUSION

Applicant respectfully submits that, as amended, the subject application is in condition for allowance, and allowance thereof is kindly requested. Should the Examiner wish to discuss these claims further, or should an Examiner's Amendment be needed in order for the

claims to proceed to allowance, the Examiner is invited to contact the undersigned attorney at the Examiner's earliest convenience.

Respectfully submitted,



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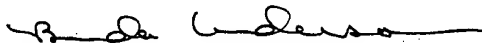
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Dated: May 19, 2003

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VERSION WITH MARKINGS TO SHOW CHANGES MADE TO THE CLAIMS ON
MAY 19, 2003

Claims 1-20: Cancelled

31. (New) A food ingredient comprising wheat gluten and soy protein, wherein utilization of the food ingredient to make a food product results in a ratio of the wheat gluten to soy protein in the food product of between about .20:1 to about .50:1 and wherein utilization of the food ingredient to make the food product does not adversely affect the texture and structure of the food product.

32. (New) The food ingredient of claim 31 wherein the food ingredient provides to the food product at least about 6% soy protein by weight of the food product.

33. (New) The food ingredient of claim 31 wherein the food ingredient provides to the food product between about 10% to about 25% soy protein by weight of the food product.

34. (New) The food ingredient of claim 31 wherein the food ingredient does not substantially impart bitterness or beanyiness to the food product.

35. (New) The food ingredient of claim 31 further comprising L-cysteine.

36. (New) The food ingredient of claim 31 further comprising wheat flour.

37. (New) The food ingredient of claim 31 further comprising starch

38. (New) The food ingredient of claim 31, wherein the soy protein is stored in a first container and the wheat gluten is stored in a second container.

39. (New) The food ingredient of claim 31, wherein the soy protein comprises soy grits and soy flour.

40. (New) A dry mix for providing soy protein to a food product that is made with the dry mix, the dry mix comprising wheat gluten and soy protein, wherein the ratio of the wheat gluten to soy protein in the food product made with the dry mix is about .20:1 to about .50:1 by weight.

41. (New) The dry mix of claim 40 wherein the food product made with the dry mix contains at least 6% protein by weight of the food product.

42. (New) The dry mix of claim 40 wherein the food product made with the dry mix contains about 10% to about 20% protein by weight of the food product.

43. (New) The dry mix of claim 40 wherein the dry mix does not substantially impart bitterness or beanyness to the food product.

44. (New) The dry mix of claim 40 further comprising L-cysteine.

45. (New) The dry mix of claim 40 further comprising wheat flour.

46. (New) The dry mix of claim 40 further comprising starch.

47. (New) The dry mix of claim 40, wherein the soy protein comprises soy grits and soy flour.

48. (New) A kit for making a food product, the kit comprising the dry mix of claim 40 and wherein the soy protein is stored in a first container and the wheat gluten is stored in a second container.

49. (New) The kit of claim 48 wherein the dry mix further comprises L-cysteine, starch, and wheat flour.

50. (New) The kit of claim 48 wherein the food product is selected from the group consisting of French bread, Italian bread, brioche, wheat bread, egg bread, pizza crust,

baguettes, bagels, potato bread, variety bread, bread sticks, rolls, pie crust, tortillas, pita bread, flatbread, multigrain bread, calzones, pancakes and waffles.

51. (New) The kit of claim 48 wherein the food product is pasta.

52. (New) The kit of claim 51 wherein the pasta is selected from the group consisting of fettuccine, macaroni, spaghetti, rigatoni, fucilli, linguine, cannelloni, ravioli, trenette, lasagna and noodles.



Dated: May 19, 2003

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Respectfully submitted,

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